

# Senate Daily Reader

**Tuesday, January 24, 2006**

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# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

527M0313

## SENATE APPROPRIATIONS COMMITTEE

### ENGROSSED NO. **SB 19** - 01/20/2006

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to revise the General Appropriations Act for fiscal year  
2 2006 regarding appropriations to the Board of Regents.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That section 13 of chapter 30 of the 2005 Session Laws be amended to read as  
5 follows:

6 BOARD OF REGENTS

7 University of South Dakota School of Medicine

8 Personal Services, Federal Funds, delete "\$10,032,263" and insert "\$10,732,263"

9 Operating Expenses, Federal Funds, delete "\$7,417,467" and insert "\$7,667,467"

10 Personal Services, Other Funds, delete "\$6,635,911" and insert "\$6,779,938"

11 Operating Expenses, Other Funds, delete "\$3,067,626" and insert "\$3,573,599"

12 F.T.E., delete "360.1" and insert "382.1"

13 Adjust all totals accordingly.

14 South Dakota State University Proper

15 Personal Services, Federal Funds, delete "\$3,639,831" and insert "\$4,619,831"



1           Operating Expenses, Federal Funds, delete "\$12,061,290" and insert "\$14,239,362"

2           Operating Expenses, Other Funds, delete "\$41,788,147" and insert "\$43,044,547"

3   Adjust all totals accordingly.

4       Black Hills State University

5           F.T.E., delete "413.4" and insert "417.9"

6   Adjust all totals accordingly.

7       Dakota State University

8           Personal Services, Federal Funds, delete "\$417,624" and insert "\$617,624"

9           Operating Expenses, Federal Funds, delete "\$1,711,124" and insert "\$2,111,124"

10          Personal Services, Other Funds, delete "\$7,089,266" and insert "\$7,164,266"

11          Operating Expenses, Other Funds, delete "\$7,225,718" and insert "\$7,290,718"

12          F.T.E., delete "258.5" and insert "264.5"

13   Adjust all totals accordingly.

14       Section 2. The effective date of this Act is June 21, 2006.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

400M0365

## SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB 29** - 01/19/2006

Introduced by: The Committee on Education at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the examination of  
2 teacher and administrator preparation programs.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-1-44 be amended to read as follows:

5 13-1-44. The Department of Education, the colleges of education at public universities, and  
6 the Board of Education shall jointly examine the teacher preparation and administrator  
7 preparation programs at the public universities. ~~They shall file a report by November 15, 2000,~~  
8 ~~and deliver it~~ Beginning on July 1, 2006, the Department of Education shall report on the  
9 preparation programs at each university at least once every seven years on a cyclical basis and  
10 distribute the reports to the Governor, the Legislature, and the Board of Regents. ~~The report~~  
11 reports shall describe the programs, explain strengths and deficiencies in the programs, and  
12 recommend actions to improve the programs.



# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

400M0335

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 31** - 01/19/2006

Introduced by: The Committee on Commerce at the request of the Department of Labor

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the licensing and  
2 regulation of technical professions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 36-18A-1 be amended to read as follows:

5 36-18A-1. Terms used in this chapter mean:

- 6 (1) "Alteration," for the purpose of determining exemptions, any remodeling, renovation,  
7 or reconstruction to a building which changes the use, occupancy classification, or  
8 occupant load, or the exiting, structural, mechanical, or electrical systems of a  
9 building as defined by the building code;
- 10 (2) "Architect," any person licensed in good standing and legally authorized to practice  
11 architecture in this state;
- 12 (3) "Architectural intern," any person who has successfully completed an accredited  
13 education program in architecture acceptable to the board and is enrolled in the intern  
14 development program administered by the National Council of Architectural  
15 Registration Boards;



- 1       (4)    "Board," the Board of Technical Professions;
- 2       (5)    "Building," any structure used or intended to support or shelter any occupancy;
- 3       (6)    "Building or floor area," the sum of the areas of all of the floors of a building,  
4           including basements, mezzanine, and intermediate tiers, and penthouses of headroom  
5           height, measured from the exterior faces of exterior walls or from the center line of  
6           the wall separating buildings. The building area does not include such features as  
7           pipe trenches, exterior terraces or steps, chimneys, vent shafts, courts, and roof  
8           overhangs. The floor area of enlargements shall be added to the existing building  
9           area. A fire or area separation wall is not an exterior wall for the purposes of this  
10          definition;
- 11       (7)    "Building official," the officer or other designated authority charged with the  
12          administration and enforcement of the adopted code;
- 13       (8)    "Business entity," any corporation, partnership, limited liability corporation, limited  
14          liability partnership, or sole proprietorship that practices or offers to practice  
15          engineering, architecture, land surveying, landscape architecture, petroleum release  
16          assessment, or petroleum release remediation services to the public through its  
17          licensed personnel who are either employees, officers, directors, partners, members,  
18          managers, or owners and that have been issued a certificate of authorization by the  
19          board;
- 20       (9)    "Construction administration," the interpretation of drawings and specifications, the  
21          establishment of standards of acceptable workmanship, and the site observation of  
22          construction, by a licensed professional, for the purpose of determining whether the  
23          work is in general accordance with the construction contract documents. Shop  
24          drawing review, coordination of a construction project among the owner, architect,

1 engineer, contractor, and subcontractors, and inspection of construction by  
2 contractors, subcontractors, owner's agents, building officials, or other unlicensed  
3 professionals does not constitute construction administration;

4 (10) "Corrective action," an action taken to minimize, contain, eliminate, remediate,  
5 mitigate, or clean up a petroleum release, excluding removal of a petroleum tank of  
6 less than one thousand one hundred gallons;

7 (11) "Design-build," a delivery approach in which a project team of design professionals  
8 and builders perform design and construction services under contract with a client;

9 (12) "Engineer," a person who is qualified to practice engineering by reason of special  
10 knowledge and use of the mathematical, physical, and engineering sciences and the  
11 principles and methods of engineering analysis and design, acquired by engineering  
12 education and engineering experience;

13 (13) "Engineering intern" or "engineer-in-training" or ~~"EIT" or "EI;"~~ or "EIT," a person  
14 enrolled by the board as an engineering intern and who has successfully passed the  
15 fundamentals of engineering examination;

16 (14) "Enlargement," for the purpose of determining exemptions, is any addition to a  
17 building which changes the use, occupancy classification, or occupant load, or the  
18 exiting, structural, mechanical, or electrical systems of a building as defined by the  
19 building code adopted by the board;

20 (15) "Land surveyor," a person licensed in good standing and legally authorized to  
21 practice land surveying in this state;

22 (16) "Land surveying intern" or "land surveyor-in-training" or ~~"LSIT" or "LSI;"~~ or LSIT,"  
23 a person enrolled by the board as a land surveying intern who has successfully passed  
24 the fundamentals of land surveying examination;

- 1 (17) "Landscape architect," a person licensed in good standing and legally authorized to  
2 practice landscape architecture in this state;
- 3 (18) "Landscape architectural intern," a person who has successfully completed an  
4 accredited education program in landscape architecture adopted by the board;
- 5 (19) "License," a certificate indicating authority to practice and use titles within a  
6 profession;
- 7 (20) "Licensee," a person or business entity whose license is in good standing;
- 8 (21) "Petroleum," gasoline, alcohol-blended fuels, diesel fuels, aviation gasoline, jet fuel,  
9 fuel oil, kerosene, burner oil, naphtha, lubricating oils, motor oil, automatic  
10 transmission fluid, waste oil, or alcohols that have been denatured with gasoline and  
11 stored to be used as blended fuel-grade ethanol;
- 12 (22) "Petroleum release assessor," a person licensed in good standing and legally  
13 authorized to practice petroleum release assessment in this state;
- 14 (23) "Petroleum release remediator," a person licensed in good standing and legally  
15 authorized to practice petroleum release remediation in this state;
- 16 (24) "Prime professional," a qualified architect or engineer duly licensed in South Dakota  
17 who is granted primary responsibility by the owner for the design and construction  
18 administration of a nonexempt project, and in the case of multidiscipline projects, is  
19 also responsible for coordinating the work of the professionals from the various  
20 disciplines needed for the design and construction administration of that  
21 multidiscipline project;
- 22 (25) "Professional engineer," a person licensed in good standing and legally authorized  
23 to practice engineering in this state;
- 24 ~~(25)~~(26) "Release," the spilling, leaking, emitting, discharging, escaping, leaching, or



1 disposing of a reportable quantity of petroleum;

2 ~~(26)~~(27) "Remedial investigation," an action to identify the corrective action to be taken  
3 to protect the public health, safety, and environment and to contain a release  
4 of petroleum into the environment;

5 ~~(27)~~(28) "Responsible charge," the immediate and responsible direction by a licensed  
6 professional who has exercised personal direction, guidance, and control over  
7 the design, preparation of documents, construction administration, and other  
8 professional services and has exercised professional judgment in all matters  
9 relating to those services;

10 ~~(28)~~(29) "Retired licensee," a person who is retired and is no longer licensed to practice  
11 that person's profession may use the appropriate honorific title or combination  
12 of titles of Architect, Retired; Professional Engineer, Retired; Land Surveyor,  
13 Retired; or Landscape Architect, Retired;

14 ~~(29)~~(30) "Site assessment," an action to identify the existence, source, nature, and  
15 extent of a release and the extent of any danger to public health, safety, and  
16 welfare of the public or environment;

17 ~~(30)~~(31) "Site observation," the visual observation of a construction project for general  
18 compliance with submitted plans and specifications at significant stages and  
19 at project completion.

20 Section 2. That chapter 36-18A be amended by adding thereto a NEW SECTION to read  
21 as follows:

22 For the purposes of this chapter, the term, inactive licensee, is a licensee who ceases to  
23 practice or offer to practice in the licensee's profession. Inactive status shall be granted to any  
24 licensee who does not wish to renew but would like his or her files to be kept active for possible

1 reinstatement. No inactive licensee may practice or offer to practice professional services in  
2 South Dakota unless otherwise exempted in this chapter. Inactive licensees are exempt from the  
3 continuing education requirements.

4 Section 3. That § 36-18A-2 be amended to read as follows:

5 36-18A-2. For the purposes of this chapter, the term, practice of architecture, means the  
6 practice or offering to practice any service in connection with the design, evaluation,  
7 construction, enlargement, or alteration of a building or group of buildings and the space within  
8 and surrounding such buildings, which have as their principal purpose human occupancy or  
9 habitation. Such service includes consultation; evaluation; ~~expert technical testimony~~; planning;  
10 providing preliminary studies; designs; overall interior and exterior building design; preparation  
11 of drawings, specifications, and related documents and other technical submissions;  
12 construction administration services which include the review or observation of construction  
13 for the purpose of determining whether the work is in general accordance with the design,  
14 drawings, specifications, codes, and other technical submissions; and coordination of services  
15 furnished by the architect, licensed professional engineers, and other consultants as they relate  
16 to architectural work in connection with the design and construction of any private or public  
17 building, building project, or integral part or parts of buildings, or any addition or alteration  
18 thereto. The term also includes representation of clients in connection with the construction  
19 administration services entered into between clients and contractor and others.

20 Section 4. That § 36-18A-3 be amended to read as follows:

21 36-18A-3. For the purposes of this chapter, the term, practice of engineering, means the  
22 practice or offering to practice of any service or creative work, the adequate performance of  
23 which requires engineering education, training, and experience in the application of special  
24 knowledge of the mathematical, physical, and engineering sciences to such services or creative

1 work. Such service or work includes consultation; investigation; ~~expert technical testimony;~~  
2 evaluation; planning; design; and design coordination of engineering works and systems;  
3 planning the use of land and water; land-use studies; teaching of advanced engineering design  
4 subjects; performing engineering studies; and the review or observation of construction for the  
5 purpose to determine whether the work is in general accordance with drawings, specifications,  
6 and other technical submissions. Any such service or work, either public or private, may be in  
7 connection with any utilities, structures, buildings, machines, equipment, processes, work  
8 systems, projects, and industrial or consumer products, or equipment of a mechanical, electrical,  
9 hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or  
10 property, and including such other professional services as are necessary to the planning,  
11 progress, and completion of any engineering services.

12 For the purposes of this section, the term, design coordination, includes the review and  
13 coordination of those technical submissions prepared by others, including consulting engineers,  
14 architects, landscape architects, land surveyors, and other professionals working under the  
15 direction of the engineer. The term, engineering studies, includes all activities required to  
16 support the sound conception, planning, design, construction, maintenance, and operation of  
17 engineered projects, but excludes the surveying of real property for the establishment of land  
18 boundaries, rights-of-way, easement exhibits relating to land boundaries, and the dependent or  
19 independent surveys or resurveys of the public land survey system.

20 A person is construed to practice or offer to practice engineering if the person practices any  
21 branch of the profession of engineering, if the person, by verbal claim, sign, advertisement,  
22 letterhead, card, or in any other way represents himself or herself to be a professional engineer,  
23 or if the person through the use of some other title implies that the person is a professional  
24 engineer or that the person is licensed under these provisions, or if the person holds himself or

1 herself out as able to perform or does perform any engineering service or work or any other  
2 service designated by the practitioner which is recognized as engineering.

3 Section 5. That § 36-18A-8 be amended to read as follows:

4 36-18A-8. Any person or business entity practicing or offering to practice architecture,  
5 engineering, land surveying, landscape architecture, or petroleum release assessment or  
6 remediation shall submit evidence of qualifications to the board and be licensed in accordance  
7 with the provisions of this chapter. No person or business entity may practice or offer to practice  
8 any of these professions, or to use in connection with that person's or business entity's name or  
9 otherwise assume, use, or advertise any title or description that may falsely convey the  
10 impression that the person is duly licensed under the provisions of this chapter unless the person  
11 is so licensed.

12 Section 6. That § 36-18A-9 be amended to read as follows:

13 36-18A-9. This chapter does not apply to:

- 14 (1) Any person engaged in military engineering while rendering service exclusively for  
15 any of the armed forces of the United States or this state;
- 16 (2) Any person engaged in the practice of professional engineer or architecture in the  
17 employ of the United States government but only while exclusively engaged as a  
18 United States government employee on such government project or projects which  
19 lie within federally-owned land;
- 20 (3) Any person engaged in the practice of professional engineering, architecture,  
21 landscape architecture, or land surveying in the employ of the state and any of its  
22 political subdivisions but only while rendering service exclusively to such employer.  
23 Any building project resulting from the practice of professional engineering,  
24 architecture, landscape architecture, or land surveying under this subdivision is

subject to the size limitation imposed under the exemptions in subdivision (8) of this section;

(4) Any employee who prepares technical submissions or administers construction contracts for a person or organization lawfully engaged in the practice of engineering, architecture, or land surveying, if the employee is under the direct supervision of a registered professional engineer, architect, or land surveyor;

(5) Any full-time employee of a corporation, partnership, firm, business entity, or public utility while exclusively doing work for the corporation, partnership, firm, business entity, or public utility, if the work performed is in connection with the property, products, and services utilized by the employer and not for any corporation, partnership, firm, or business entity practicing or offering to practice architectural, engineering, or land surveying services to the public. The provisions of this subdivision do not apply to any building or structure if the primary use is occupancy by the public;

(6) Any person engaged in the preparation of plans and specifications for the ~~erection,~~ new construction, the enlargement, or the alteration of any of the following buildings:

(a) Any dwelling for ~~a single family~~ one to four families, and any outbuilding in connection therewith, such as a barn or private garage;

(b) ~~Any two, three, or four family dwelling;~~

~~(c)~~ Any five to sixteen family dwelling, inclusive, located in a governmental subdivision of this state which provides a detailed building code review of building projects by a building inspection department which is a Class A member of the International ~~Conference of Building Officials~~ Code Council or such plans are provided with a detailed review by an International Code

Council certified building plans examiner;

~~(b)~~(c) Any farm or ranch building or accessory thereto except any building regularly used for public purposes;

~~(c)~~(d) Any temporary building or shed used exclusively for construction purposes, not exceeding two stories in height, and not used for living quarters;

(7) Any person who prepares detailed or shop plans required to be furnished by a contractor to a registered professional engineer or architect, and any construction superintendent supervising the execution of work designed by an architect or professional engineer registered in accordance with this chapter;

(8) Any person engaged in the preparation of plans and specifications for the new construction, the enlargement or the alteration of any of the following buildings:

(a) Any building occupied as a hospital, hotel, motel, restaurant, library, medical office, nursing facility, assisted living facility, jail, retirement home, or mortuary, if the gross square footage of the new construction, the enlargement, or the alteration is four thousand square feet or less;

(b) Any building occupied as an auditorium, church, school, or theater if the gross square footage of the new construction, the enlargement, or the alteration is five thousand square feet or less;

(c) Any building occupied as a bowling alley, office, shopping center, bank, fire station, service station, or store if the gross square footage of the new construction, the enlargement, or the alteration is seven thousand square feet or less;

(d) Any building occupied as an industrial plant or public garage if the gross square footage of the new construction, the enlargement, or the alteration is

eleven thousand square feet or less;

(e) Any building occupied as a warehouse if the gross square footage of the new construction, the enlargement, or the alteration is twenty thousand square feet or less;

(f) Any building with an occupancy other than those listed in subsections (a) to (e), inclusive, of this subdivision if the gross square footage of the new construction, the enlargement, or the alteration is four thousand square feet or less;

~~(g) Any preengineered or predesigned building, or any preengineered or predesigned building with a predesigned system, designed for the intended use of that building, including building structure, electrical, plumbing, and mechanical systems, if the buildings and systems are supplied directly, or indirectly, by a company engaged in the business of designing and supply such buildings and systems and if the company has in its employ one or more engineers or architects licensed in South Dakota, who prepare all designs for such buildings and systems.~~

No exempt person ~~exempted~~ may use the title of professional engineer, architect, or land surveyor, or any other word, words, letters, or signs in connection with the person's name that may falsely convey the impression that the person is a licensed professional engineer, architect, or land surveyor.

Section 7. That § 36-18A-15 be amended to read as follows:

36-18A-15. Each member of the board shall be a citizen of the United States ~~and~~, a resident of this state, and in good standing with the board. Any member of the board whose individual license is revoked or suspended automatically ceases to be a member of the board. The public

1 member may not be or have been engaged in any activity subject to licensure under this chapter.

2 The members may not all be of the same political party.

3 Section 8. That § 36-18A-22 be amended to read as follows:

4 36-18A-22. The board shall, pursuant to chapter 1-26, promulgate rules which may be  
5 reasonably necessary for the performance of its duties, the regulation of proceedings before it,  
6 and the licensure of the professions it regulates. The existing rules promulgated under the  
7 previous chapter 36-18 remain in effect until replaced. The board shall promulgate rules,  
8 pursuant to chapter 1-26, for the licensure of professional engineers, architects, land surveyors,  
9 landscape architects, and petroleum release assessors and remediators in the following areas:

- 10 (1) Forms such as applications, renewals, licenses or certificates, and receipts, ~~and~~  
11 ~~walletcards~~ for applicants, licensed professionals, and business entities;
- 12 (2) Fees for applications, examinations, renewals, late penalties, lists and labels of  
13 licensees, returned checks, reinstatement, inactive status, ability to allow a vendor to  
14 collect fees for examinations, waiver of fees;
- 15 (3) Criteria for types of education degrees, approval of accredited programs, intern  
16 programs, type of experience, length of experience, national and state specific  
17 examinations, use of computer examinations, criteria from other countries, procedure  
18 to evaluate foreign degrees, eligibility of applicants, dual licenses;
- 19 (4) Continuing professional education and development content, hours, carryovers, and  
20 requirements;
- 21 (5) How, when, and where to seal plans and documents; type of seal; required services  
22 to be provided; and criteria to define complete plans, minimum standards of practice,  
23 and guidelines;
- 24 (6) Description of and criteria for construction administration, including a designation



1 of who is to perform construction administration and criteria for a prime professional  
2 or a coordinating professional;

3 (7) Requirements for compliance with local building code;

4 (8) The adoption of a code of professional conduct;

5 (9) Procedures for disciplinary proceedings; and

6 (10) Procedures for contested cases pursuant to chapter 1-26.

7 Section 9. That § 36-18A-26 be amended to read as follows:

8 36-18A-26. Any applicant for licensure as a professional engineer shall provide the  
9 following evidence satisfactory to the board:

10 (1) Graduation from an accredited engineering college, university, or technical program;

11 (2) Completion of the minimum number of years of diversified engineering experience  
12 under the supervision of a licensed professional engineer; and

13 (3) Successful completion of examinations.

14 ~~A person who has begun the requirement for licensure without minimum education and has~~  
15 ~~qualifying experience as of July 1, 1999, shall apply to the board before July 1, 2004, for~~  
16 ~~approval to take the examination under the qualifications that previously existed under § 36-18-~~  
17 ~~17.4. The board shall promulgate rules, pursuant to chapter 1-26, to establish education,~~  
18 ~~experience, and examination criteria.~~

19 Section 10. That § 36-18A-42 be amended to read as follows:

20 36-18A-42. A person or business entity may reinstate an expired license or request inactive  
21 status within three years after a license's date of expiration if the person or business entity is  
22 otherwise qualified. The fee for the reinstatement of the license or requesting inactive status  
23 after it has expired shall be increased by an amount to be determined by the board in rules  
24 promulgated pursuant to chapter 1-26. A person requesting reinstatement of an expired or

1 inactive license shall complete the requirements for continuing professional development and  
2 any reexaminations and pay any penalty fees. If a person or business entity fails to reinstate an  
3 expired license or request inactive status within the three years after the date of expiration, all  
4 relevant files shall be ~~deleted~~ destroyed. A person or business entity requesting licensure after  
5 three years shall submit an application for a new license. A person or business entity shall retain  
6 their original license number.

7 Section 11. That § 36-18A-44 be amended to read as follows:

8 36-18A-44. Any licensed professional engineer, architect, land surveyor, and landscape  
9 architect shall procure and use an appropriate seal. The seal shall contain the following  
10 information:

- 11 (1) The name, South Dakota;  
12 (2) Licensee's name;  
13 (3) License number; and  
14 (4) The appropriate title or combination of titles: Professional Engineer, Architect, Land  
15 Surveyor, Landscape Architect.

16 The seal shall have an outer circle with a two-inch diameter and an inner circle with a one  
17 and one-fourth inch diameter. Titles may be prefixed with the words, Licensed or Registered.  
18 The seal may be an embossed seal, a rubber stamp, a computer-generated seal, or other facsimile  
19 found acceptable to the board. The licensee's original written signature and the date shall be  
20 adjacent to or across the seal. ~~Computer-generated or other facsimile signatures and dates may~~  
21 ~~not be used.~~ Petroleum release assessors and remediators, or interns, may not obtain or use any  
22 seal.

23 Section 12. That § 36-18A-45 be amended to read as follows:

24 36-18A-45. The application of the licensee's seal and signature and the date constitutes

1 certification that the work on which it was applied was done by the licensee or under the  
2 licensee's responsible charge. The seal, signature, and date shall be placed in such a manner that  
3 can be legibly reproduced on the following:

4 (1) All originals, copies, tracings, or other reproducibles of all final drawings,  
5 specifications, reports, plats, plans, land surveys, design information, and calculations  
6 prepared by the licensee or under the licensee's responsible charge when presented  
7 to a client or any public or governmental agency. A licensee may not review or check  
8 technical submissions of another licensed professional or unlicensed person and seal  
9 the documents as the licensee's own work;

10 (2) Preliminary work shall contain a note that the submittal is Not for Construction,  
11 Preliminary, or other such explanation that it is not final;

12 (3) In the case of multiple seals, the title or index sheet may be sealed, signed, and dated  
13 by all involved. In addition, each sheet shall be sealed, signed, and dated by the  
14 licensee or licensees responsible for that sheet;

15 (4) Drawings that are transmitted electronically to a client or governmental agency shall  
16 have the computer-generated seal removed from the original file. The electronic  
17 media shall have the following inserted in lieu of the seal, signature, and date: This  
18 document originally issued and sealed by (name of licensee/sealer), (title), (license  
19 number), on (date of sealing). This media should not be considered a certified  
20 document;

21 (5) Drawings, reports, or documents that are signed and sealed using a digital method  
22 shall have an electronic authentication process attached to or logically associated  
23 with the electronic documents. The digital signature shall be:

24 (a) Unique to the person using it;

(b) Capable of verification;

(c) Under the sole control of the person using it; and

(d) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

A digital signature that uses a process approved by the board shall be presumed to meet the criteria set forth in this subdivision. Any hard copy printed from the transmitted electronic file shall bear the facsimile of the signature and seal and shall be a confirmation that the electronic file was not altered after the initial digital signing of the file. Any alterations to the file shall cause the facsimile of the signature to be voided.

Section 13. That chapter 36-18A be amended by adding thereto a NEW SECTION to read as follows:

If determined by the board that a licensee in responsible charge of the work is unavailable to complete the work, a successor licensee may take responsible charge by performing all professional services to include developing a complete design file with work or design criteria, calculations, code research, and any necessary and appropriate changes to the work. The nonprofessional services such as drafting need not be redone by the successor licensee but shall clearly and accurately reflect the successor licensee's work. The burden is on the successor licensee to show compliance. The successor licensee shall sign, date, and seal all original documents. The successor licensee shall have control of and responsibility for the work product and the signed and sealed originals of all documents.

Section 14. That § 36-18A-46 be amended to read as follows:

36-18A-46. No person other than an architect or professional engineer or prime professional may provide architectural and engineering services which include construction administration

1 services on projects ~~that~~ for which they have had prime responsibility for design, which projects  
2 are not exempt pursuant to ~~§§ 36-18A-2 and 36-18A-3~~ § 36-18A-9. The architect or  
3 professional engineer of record, or ~~another designated architect or professional engineer without~~  
4 ~~conflict of interest, shall provide a written report of observed deficiencies or variations from the~~  
5 ~~submitted plans and specifications to the building official, owner, and builder before project~~  
6 ~~completion~~ the prime professional in the case of multidiscipline projects, shall provide  
7 construction administration services. In situations where the architect or professional engineer  
8 of record or the prime professional is unable or unwilling to perform the construction  
9 administration, or is removed from the project for any justifiable reason, or has a conflict of  
10 interest involving the construction of the project, then another designated architect, professional  
11 engineer, or prime professional without conflict of interest shall provide the construction  
12 administration services. Construction administration tasks which require the services of a  
13 specialized discipline shall be performed by an architect or professional engineer qualified in  
14 that discipline. The board may promulgate rules pursuant to chapter 1-26 to establish  
15 construction administration services criteria including ~~coordinating and~~ prime professional  
16 criteria for persons licensed by the board.

17 Section 15. That § 36-18A-47 be amended to read as follows:

18 36-18A-47. Any ~~office physically located and maintained in~~ business entity licensed by this  
19 state to offer engineering, architectural, land surveying, landscape architectural, petroleum  
20 release assessment, or petroleum release remediation services shall have an appropriately  
21 licensed person who is regularly employed in that ~~office~~ business entity and who has responsible  
22 charge and direct supervision and control of all professional services. ~~A~~ No licensee who  
23 renders occasional, part-time, or consulting services to or for a ~~firm or office~~ business entity  
24 may ~~not~~ be designated as the appropriately licensed person in responsible charge for the

1 professional activities of the ~~firm or office~~ business entity unless a schedule is posted at the  
2 office for the public's knowledge and filed with and approved by the board stating when the  
3 licensee is physically in the office.

4 Section 16. That § 36-18A-48 be amended to read as follows:

5 36-18A-48. Any business entity that desires to practice engineering, architecture, land  
6 surveying, landscape architecture, or petroleum release assessment or remediation in this state  
7 shall register with the board by making application for a certificate of authorization. A business  
8 entity is responsible for the conduct or acts of its agents, employees, officers, partners, members,  
9 or managers in respect to any engineering, architecture, land surveying, landscape architecture,  
10 petroleum release assessment, or petroleum release remediation services performed or to be  
11 executed in this state. No person is relieved of the responsibility for that person's conduct or acts  
12 performed by reason of that person's employment by or relationship with a business entity. ~~A~~  
13 ~~licensee who renders occasional, part-time, or consulting services to or for a business entity may~~  
14 ~~not be designated as the person in responsible charge for the professional activities of the~~  
15 ~~business entity.~~

16 Section 17. That § 36-18A-49 be amended to read as follows:

17 36-18A-49. A business entity desiring a certificate of authorization ~~or renewal~~ shall file a  
18 written application with the board which shall contain the following:

19 (1) ~~Names and addresses of the sole proprietorship and all general and limited partners,~~  
20 ~~officers, and directors of any business entity;~~

21 ~~—(2)—~~ Names and addresses The names, license numbers, and profession of all general and  
22 ~~limited partners, officers, directors, and employees or sole proprietors of such the~~  
23 business entity who are duly licensed to practice engineering, architecture, land  
24 surveying, landscape architecture, petroleum release assessment, or petroleum release

1 remediation in this state ~~and who are or will be in responsible charge of any~~  
2 ~~professional services in this state by the business entity;~~

3 (2) A statement from the business entity that the board office will be notified in writing  
4 within thirty days after the effective date of any change; and

5 (3) A statement by a ~~partner, officer, or owner~~ licensed person who works for the  
6 business entity that the business entity will not permit the performance of any  
7 professional service, as defined in this chapter, by any person of the business entity  
8 unless the person is licensed under this chapter; and

9 (4) All other information the board may deem necessary as promulgated by rule pursuant  
10 to chapter 1-26.

11 Section 18. That § 36-18A-50 be amended to read as follows:

12 36-18A-50. The board shall issue a certificate of authorization or a renewal to a business  
13 entity upon receipt of an application for a certificate of authorization and a fee as set by the  
14 board pursuant to chapter 1-26 unless the board finds an error in the application or that any facts  
15 exist which would entitle the board to suspend or revoke the certificate if issued to the applicant.  
16 The certificate of authorization is not transferable. No certificate of authorization is required for  
17 any exempt business.

18 Section 19. That chapter 36-18A be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 No architect or engineer who voluntarily, without compensation or expectation of  
21 compensation, provides professional services at the scene of a declared national, state, or local  
22 emergency at the request of a public official, public safety officer, or city or county building  
23 inspector acting in an official capacity may be liable in negligence for any personal injury,  
24 wrongful death, or property damage caused by the licensee's good faith but negligent inspection

1 of a structure used for human habitation, or a structure owned by a public entity for structural  
2 integrity, or nonstructural elements affecting life and safety. The immunity provided by this  
3 section applies only for services that occur within thirty days of the declared emergency.



# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

716M0294

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 57** - 01/19/2006

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise the definition of deceptive acts and practices and  
2 to increase the statute of limitations regarding deceptive trade practices.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 37-24-6 be amended to read as follows:

5 37-24-6. It is a deceptive or unfair act or practice for any person to:

6 (1) Knowingly ~~and intentionally act,~~ use, or employ any deceptive or unfair act or  
7 practice, fraud, false pretense, false promises, or misrepresentation or to conceal,  
8 suppress, or omit any material fact in connection with the sale or advertisement of  
9 any merchandise, regardless of whether any person has in fact been mislead,  
10 deceived, or damaged thereby. Such a deceptive or unfair act or practice violates this  
11 section whether it occurs before, during, or after a transaction or advertisement;

12 (2) Advertise price reductions without ~~satisfying one of the following:~~

13 ~~———— (a) Including either including in the advertisement the specific basis for the claim~~  
14 ~~of a price reduction; or~~

15 ~~———— (b) Offering or offering the merchandise for sale at the higher price from which~~



the reduction is taken for at least seven consecutive business days during the sixty-day period prior to the advertisement.

Any person advertising consumer property or services in this state, which advertisements contain representations or statements as to any type of savings claim, including reduced price claims and price comparison value claims, shall maintain reasonable records for a period of two years from the date of sale and advertisement, which records shall disclose the factual basis for such representations or statements and from which the validity of any such claim be established. However, these reasonable record provisions do not apply to the sale of any merchandise which:

(a) Is of a class of merchandise that is routinely advertised on at least a weekly basis in newspapers, shopping tabloids, or similar publications; and

(b) Has a sales price before price reduction that is less than fifteen dollars per item;

(3) Represent a sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first advertisement remain in business under the same, or substantially the same, ownership or trade name, or continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days;

(4) Give or offer a rebate, discount, or anything of value to ~~an individual~~ any person as an inducement for selling consumer property or services in consideration of the person giving the names of prospective purchasers or otherwise aiding in making a sale to another person, if the earning of the rebate, discount, or other thing of value is contingent upon the occurrence of an event subsequent to the time the ~~individual~~ person agrees to the sale;

- 1       (5) Engage in any scheme or plan for disposal or distribution of merchandise whereby  
2           a participant pays a valuable consideration for the chance to receive compensation  
3           primarily for introducing one or more additional persons into participation in the  
4           planner's scheme or for the chance to receive compensation when the person  
5           introduced by the participant introduces a new participant;
- 6       (6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed any  
7           unordered consumer property or service, or any bill or invoice for unordered  
8           consumer property or service provided;
- 9       (7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging  
10          accommodation which is not in fact available to the public under the terms  
11          advertised. It is not a violation of this subdivision to establish contract rates which  
12          are different than public rates;
- 13      (8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging  
14          accommodation which is different than the rate, price, or fee charged on the first  
15          night of the guest's stay unless, at the initial registration of the guest, a written  
16          notification of each price, rate, or fee to be charged during the guest's reserved  
17          continuous stay is delivered to the guest and an acknowledgment of receipt of the  
18          notice is signed by the guest and kept by the innkeeper for the same period of time  
19          as is required by § 34-18-21;
- 20      (9) Knowingly and intentionally fail to mail to a future guest a written confirmation of  
21          the date and rates of reservations made for any accommodation at a hotel, motel,  
22          campsite, or other lodging accommodation when a written request for confirmation  
23          is received from the future guest;
- 24      (10) Refuse to return or reverse the charge for a deposit upon any hotel, motel, campsite,

1 or other lodging accommodation which is canceled by the guest more than thirty days  
2 before the date of the reservation. The innkeeper may establish a policy requiring a  
3 longer time for notice of cancellation or a handling fee in the event of cancellation,  
4 which may not exceed twenty-five dollars, if the policy is in writing and is delivered  
5 or mailed to the guest at or near the making of the reservation;

6 (11) Knowingly advertise or cause to be listed through the internet or in a telephone  
7 directory a business address that misrepresents where the business is actually located  
8 or that falsely states that the business is located in the same area covered by the  
9 telephone directory. This subdivision does not apply to a telephone service provider,  
10 an internet service provider, or a publisher or distributor of a telephone directory,  
11 unless the conduct proscribed in this subdivision is on behalf of the provider,  
12 publisher, or distributor;

13 (12) Sell, market, promote, advertise, or otherwise distribute any card or other purchasing  
14 mechanism or device that is not insurance that purports to offer discounts or access  
15 to discounts from pharmacies for prescription drug purchases if:

16 (a) The card or other purchasing mechanism or device does not expressly state in  
17 bold and prominent type, prevalently placed, that discounts are not insurance;

18 (b) The discounts are not specifically authorized by a separate contract with each  
19 pharmacy listed in conjunction with the card or other purchasing mechanism  
20 or device; or

21 (c) The discount or access to discounts offered, or the range of discounts or access  
22 to the range of discounts, is misleading, deceptive, or fraudulent, regardless  
23 of the literal wording.

24 The provisions of this subdivision do not apply to a customer discount or

membership card issued by a store or buying club for use in that store or buying club; or

(13) Send or cause to be sent an unsolicited commercial electronic mail message that does not include in the subject line of such message "ADV:" as the first four characters. If the message contains information that consists of explicit sexual material that may only be viewed, purchased, rented, leased, or held in possession by an individual eighteen years of age and older, the subject line of each message shall include "ADV:ADLT" as the first eight characters. An unsolicited commercial electronic mail message does not include a message sent to a person with whom the initiator has an existing personal or business relationship or a message sent at the request or express consent of the recipient.

Each act in violation of this section is a Class 2 misdemeanor. Any subsequent conviction ~~of an act in~~ for a violation of this statute, which occurs within two years is a Class 1 misdemeanor. Any subsequent conviction ~~of an act in~~ for a violation of this statute, which occurs within two years of a conviction of a Class 1 misdemeanor pursuant to this statute, is a Class 6 felony.

Section 2. That § 37-24-33 be amended to read as follows:

37-24-33. No action under this chapter may be brought more than ~~two~~ four years after the occurrence or discovery of the conduct which is the subject of the action.